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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,080

10/27/2006

Yoshitugi Hashiba

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REED SMITH LLP

2500 ONE LIBERTY PLACE

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EXAMINER

ARNETT, NICOLAS ALLEN

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/567,080	<b>Applicant(s)</b> HASHIBA ET AL.	
	<b>Examiner</b> NICOLAS A. ARNETT	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/27/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. Figure 4 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated (pages 1-2 of Applicant's specification). See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Art Unit: 3751

3. The abstract of the disclosure is objected to because it exceeds 150 words and includes legal phraseology. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 7-9 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 3,604,057 to Nixdorff, Jr. (Nixdorff, Jr.).

Regarding claim 1, Nixdorff, Jr. discloses a device (10) for measuring a hard granular object (granules) comprising: a measuring vessel (slide plate 36) having a first face (upper surface of the plate 36), a second face parallel to the first (lower surface of plate 36) and a space (pockets 52 and 54) for receiving hard granular objects supplied from the first side (Fig. 7); a holder (top plate 34) on the side of the first face (Fig. 7), having a through hole (38, 40) communicable with the space (Fig. 7) and slidable along the first face (col. 2, line 62 - col. 3, line 25); a shutter (bottom plate 35) located on the side of the second face (Fig. 7), having a through hole communicable with the space (Fig. 8) and movable parallel to the second face (col. 2, line 62 - col. 3, line 25); and a pressing means for pressing the holder toward the measuring vessel (the weight top plate 34 on slide plate 36; the phrase “means for pressing” invokes 35 U.S.C. 112, sixth

Art Unit: 3751

paragraph and Applicant's disclosed means for pressing includes springs, hydraulic forces, pneumatic forces, the weight of the holder and/or magnetic forces; see paragraph 32 of Applicant's specification).

Regarding claim 2, Nixdorff, Jr. discloses a designated gap kept between the second face and the shutter (col. 2, lines 72-75).

Regarding claims 7, 8 and 17-20, Nixdorff, Jr. discloses the space of the measuring vessel has an opening with an unchamfered edge in both the first face and the second face (see Figs. 7 and 8 which show the edges of the opening in the slide plate are unchamfered).

Regarding claim 9, Nixdorff, Jr. discloses a method for measuring a hard granular object comprising the steps of: charging the space of the measuring vessel with a hard granular object to be measured from a holder of the measuring vessel of claim 1 (see Fig. 7); closing the openings of the space (in a position between those shown in Figs. 7 and 8 the openings are closed by the top and bottom plates); and discharging the hard granular object from the space of the measuring vessel (Fig. 8).

6. Claims 1, 4 and 6-9 are rejected under 35 U.S.C. 102(a) as being anticipated by Applicant's Admitted Prior Art (pages 1-2 and Fig. 4 of Applicant's specification).

Regarding claim 1, Applicant discloses a device (Fig. 4) for measuring a hard granular object comprising: a measuring vessel (1) having a first face (upper surface of 1), a second face parallel to the first (lower surface of 1) and a space (open portion of 1) for receiving hard granular objects supplied from the first side; a holder (2) on the side

Art Unit: 3751

of the first face (Fig. 4), having a through hole (Fig. 4) communicable with the space (Fig. 4) and slidable along the first face ([0003]); a shutter (4) located on the side of the second face (Fig. 4), having a through hole communicable with the space (Fig. 4) and movable parallel to the second face ([0003]); and a pressing means for pressing the holder toward the measuring vessel (the weight holder 2 on measuring vessel 1; the phrase "means for pressing" invokes 35 U.S.C. 112, sixth paragraph and Applicant's disclosed means for pressing includes springs, hydraulic forces, pneumatic forces, the weight of the holder and/or magnetic forces; see paragraph 32 of Applicant's specification).

Regarding claims 4 and 6, Applicant discloses part of the first and second faces is made of an abrasion resistant material ([0002], stainless steel).

Regarding claims 7 and 8, Applicant discloses the space of the measuring vessel has an opening with an unchamfered edge in both the first face and the second face (see Fig. 4 which shows the edges of the opening in the measuring vessel 1 are unchamfered).

Regarding claim 9, Applicant discloses a method for measuring a hard granular object comprising the steps of: charging the space of the measuring vessel with a hard granular object to be measured from a holder of the measuring vessel of claim 1 ([0003]); closing the openings of the space (as the measuring vessel moves between the charging and discharging positions the openings are closed); and discharging the hard granular object from the space of the measuring vessel ([0003]).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nixdorff, Jr.

Regarding claims 3 and 10, Nixdorff, Jr. discloses the claimed invention except for the holder being pressed toward the measuring vessel with a force smaller than that required to crush the hard granular object. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the force of the holder on the measuring vessel such that the force is less than the force required to crush the object, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

9. Claims 4-6 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nixdorff, Jr. in view of US Patent 6,131,766 to King et al. (King).

Regarding claims 4-6 and 11-16, Nixdorff does not disclose part of the first and second faces being made of an abrasion resistant material and part of the holder being made of acetal resin. Nixdorff, Jr. is silent as to the material used to make the device. King teaches a dispensing device having sliding parts which are made from acetal resin

Art Unit: 3751

(a known abrasion resistant material) to prevent wear and oxidation of the parts and to allow for easy cleaning (col. 8, line 64 – col. 9, line 4). It would have been obvious to one of ordinary skill in the art at the time of invention to have formed the holder and faces of the measuring vessel of Nixdorff, Jr. using acetal resin according to the teachings of King so that the device is wear and oxidation resistant and easy to clean.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 6,050,308 discloses a powder dispenser having a gap between a measuring vessel and shutter. US Patent 4,733,803 discloses a dispensing apparatus having a measuring vessel made from an abrasion resistant material. US Patent 4,721,233, US Patent 6,148,636, US Patent 5,685,461, US Patent 5,409,137, US Patent 3,185,190, US Patent 2,761,588, US Patent 2,405,507, US Patent 6,811,061 and US Patent 4,635,829 each disclose devices having measuring vessels generally related to Applicant's disclosure and claimed invention.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLAS A. ARNETT whose telephone number is (571)270-5062. The examiner can normally be reached on Monday - Friday 7:30 AM to 3:30 PM EST.



Art Unit: 3751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NAA

/Gregory L. Huson/  
Supervisory Patent Examiner, Art Unit 3751